No. 15,105

United States Court of Appeals

For the Ninth Circuit

Palo Alto Mutual Savings and Loan Association,

Appellant,

vs.

Ralph E. Williams, Trustee in Bankruptcy of John E. Duskin, formerly known as John E. Duskin, General Contractors, Bankrupt,

Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

APPELLANT'S OPENING BRIEF.

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PALO ALTO MUTUAL SAVINGS AND LOAN ASSOCIATION, *Appellant,* vs. RALPH E. WILLIAMS, Trustee in Bankruptcy of John E. Duskin, formerly known as John E. Duskin, General Contractors, Bankrupt, *Appellee.*	

Appeal from the United States District Court for the Northern District of California, Southern Division.

APPELLANT'S OPENING BRIEF.

A. STATEMENT OF PLEADINGS, FACTS AND JURISDICTION.

This is an appeal from that certain order, made and entered on February 15, 1956 by Honorable Oliver J. Carter of the United States District Court, which order approved the Referee in Bankruptcy's prior order denying appellant's claim against the estate of the above-named bankrupt for post-bankruptcy interest on its secured claim.

The Appellate Jurisdiction of this Court is provided for by 11 U.S.C.A. 47, 48, and 28 U.S.C.A. 225(c).

On and prior to July 14, 1954, John E. Duskin, Jr. (bankrupt herein) and his wife as joint tenants owned two unimproved parcels of real property in the County of Santa Clara, State of California.

Appellant herein is a Savings and Lending institution created under the laws of the State of California and subject to the rules and regulations of the Building and Loan Commissioner of said State, as well as subject to the laws and statutes of the United States regulating such lending institutions. On August 17, 1953, said appellant made two construction loans to the bankrupt and his wife, each in the principal sum of $10,999.00, each evidenced by the execution and delivery to appellant of a promissory note with interest at 5½ per cent per annum and each secured by a properly recorded first deed of trust on each of said parcels of real property respectively (T.R. 46 to 52).

Each promissory note provided for 5½ per cent interest per annum on the balance thereof until paid (T.R. 5). Each deed of trust provided that it was security for not only the principal of the note it secured but also the interest therein provided for until the whole amount of principal and interest had been repaid in full (T.R. 7, 8).

The whole principal sum of the first loan was used solely by the borrowers in improving the parcel

securing that particular loan by constructing a home thereon, and likewise the whole principal sum of the second loan was so used by borrowers in erecting a home on the second parcel securing that second loan (T.R. 46 to 52).

On July 14, 1954, John E. Duskin, Jr., was adjudged bankrupt. On said date no part of either of the above principal sums had been paid, and under the terms of the note and deed of trust as to each parcel accrued interest was due and unpaid.

Within proper time limits, appellant filed its verified claims of secured lien, claiming the principal sum due on each promissory note, together with interest thereon at 5½ per cent per annum until the principal sum was repaid, and asking for other certain costs and fees (T.R. 3, 20, 21, 48 and 49).

On March 18, 1955, the trustee herein, pursuant to an order of the referee in bankruptcy, sold both parcels free and clear of liens, each for an amount sufficient to pay the principal sum due appellant, together with interest on said principal sum, as provided by the promissory note for which deed of trust was given as security, to the date of sale. At the time of filing the petition in bankruptcy there existed a second deed of trust on each of the parcels of real property herein mentioned, and also there existed of record against both parcels various claims of lien of laborers and materialmen. Said second deeds of trust and all of the above-mentioned claims of lien were subordinate to the first deeds of trust in favor of appellant (T.R. 50).

On the aforesaid sale free and clear of liens the sales proceeds, even though post-bankruptcy interest were withheld after date of adjudication, were not sufficient to pay in full the claims of the second deed of trust holders. Regardless then of whether post-bankruptcy interest was or was not allowed to appellant, there were no funds available from either of said sales for the benefit of general unsecured creditors (T.R. 53).

Subsequent to the above sale free and clear of liens, the trustee, on April 22, 1955, filed objections to appellant's claims of lien insofar as they claimed interest after July 14, 1954. The referee, on May 14, 1955, made his order allowing each claim as to principal, interest to July 14, 1954, and certain other costs, but disallowing interest from July 14, 1954 to March 18, 1955, the date of sale (T.R. 23-28). This denied appellant's claim for interest in the sum of $418.20 as to the first loan and $418.20 as to the second loan, and therefore for a sum in excess of $500.00.

B. STATEMENT OF QUESTION PRESENTED.

(A) General Question.

Where property is sold in bankruptcy proceedings free and clear of liens, and the sales proceeds are sufficient to pay principal of the claim for which the property is a first security, together with accrued interest to date of sale, shall the post-bankruptcy interest be allowed?

(B) Specific Question.

The above question, together with any one or more or all of the following factors:

(1) the terms of the agreement creating the security specifically provide that the same shall secure payment of interest to date of repayment of principal;

(2) where the secured claimant is a savings and loan association, and made a construction loan on the security of a first deed of trust on real property, the proceeds of which loan are directly converted into an improvement built upon said property;

(3) even if post-bankruptcy interest is *not* allowed, sales proceeds are not sufficient to benefit any general unsecured creditors at all;

(4) the only party benefited by disallowing post-bankruptcy interest is the junior deed of trust claimant, who, had the property been sold *outside* of bankruptcy proceedings, would not have received this bonus.

C. SPECIFICATIONS OF ERROR.

1. The order disallowing interest to date of sale of the security where sales proceeds were sufficient to pay such interest is contrary to the law of the United States.

2. Said order is contrary to the law of the United States, in that it incorrectly interpreted and/or incorrectly applied the case of *Beecher v. Leavenworth State Bank,* 192 F. 2d 10 (9th Cir., 1951).

3. If said order correctly interpreted and correctly applied the aforesaid *Beecher* case, then, said case being contrary to the prevailing law as established by the Bankruptcy Act, the Supreme Court and the courts in all other circuits of these United States, should be overruled.

D. ARGUMENT.

Initially, it is clear that where a security is sold free and clear of liens in ordinary bankruptcy proceedings, where the security by its terms includes the payment of interest, and the sales proceeds are sufficient to pay the interest to date of sale as well as the principal of the claim, the Supreme Court on the few occasions it has dealt with the topic and United States courts in all circuits (including the Ninth until 1951) allow the post-bankruptcy interest to date of sale.

Sexton v. Dreyfus, 219 U.S. 339, 55 L. Ed. 244 (1911);

Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 79 L. Ed. 1593 (1935);

Vanston Bondholders v. Green, 329 U.S. 156 91 L. Ed. 162 (1946);

Kagen v. Industrial Washing Machine Co., 182 F. 2d 139, 146 (1st Cir., 1950);

Re Gotham Can Co., 48 F. 2d 540 (2nd Cir., 1931);

Re Torchia, 185 F. 576, 188 F. 207 (3rd Cir., 1911);

Littleton v. Kincaid, 179 F. 2d 848, 852 (4th Cir.);
United States v. Paddock, 187 F. 2d 271 (5th Cir.);
Re Macomb Trailer Coach, Inc., 200 F. 2d 611 (6th Cir., 1953);
In re Chicago R. I. & P. Ry. Co., 155 F. 2d 889, 892 (7th Cir.);
U. S. Trust Co. v. Zelle, 191 F. 2d 822 (8th Cir., 1951);
United States v. Sampsell, 153 F. 2d 731 (9th Cir., 1946);
In re Deep Rock Oil Co., 113 F. 2d 266, 269 (10th Cir., 1940);
In re Fabacher, D.C.E.D., 193 F. 556 (D.C.).

This arises from the very nature of a sale free and clear of liens. The lien attaches to the proceeds, and the only question is *what* the lien secures. Traditionally, property rights valid by state law are not impaired by bankruptcy (*Oppenheimer v. Oldham,* 178 F. 2d 386 (C.A. 5th, 1949)). Section 57(h), Bankruptcy Act, mandates that securities shall be converted into money "according to the terms of the agreement pursuant to which such securities were delivered. * * *." If the agreement provides that interest to date of payment is *also* secured, that is that.

The case at bar is exactly that type of case. Yet the order herein complained of *denies* appellant post-bankruptcy interest to date of payment. In so doing

it relies solely upon the case of *Beecher v. Leavenworth State Bank,* 192 F. 2d 10 (9th Cir., 1951), and the *Beecher* case in turn cites the *Sexton* and *Vanston* Supreme Court cases, apparently for its position.

To clarify the immediately apparent confusion, an analysis of these two Supreme Court cases is first necessary.

Sexton v. Dreyfus started out as a secured claim case, ended by denying post-bankruptcy interest under the *un*secured claims rule.

The reason is relatively simple. Creditors holding pledged securities sold them after bankruptcy, and didn't realize enough to pay even the *principal* secured, much less interest. Coyly they tried to pay themselves interest first, the remainder on principal, and prove the balance as general creditors. Since sales proceeds of the security were *not sufficient* to pay post-bankruptcy interest, there was nothing to take the case out of the unsecured claims rule—for as to the balance due it was just that: a secured claim with security exhausted, which is just about as unsecured as you can get.

Twenty-four years later this same Supreme Court *(Louisville Joint Stock Land Bank v. Radford, supra)* denounced the contention that interest on secured as well as unsecured claims ceases with the filing of the petition where the situation deals with a *sale free of liens,* stating (footnote 31):

> "But the rule relied upon applies only when the secured creditor, having realized upon his security, is seeking as a general creditor to prove

for the deficiency against the bankrupt estate, Sexton v. Dreyfus, 219 U.S. 339, 55 L. Ed. 244, 31 S. Ct. 256, 25 Am. Bankr. Rep. 363. *It has no application when the mortgagee has a preferred claim against proceeds realized by the trustee from a sale of the security free of liens.*" (Emphasis ours).

Thirty-five years after the *Sexton* case, the Supreme Court decided *Vanston Bondholders v. Green,* 329 U.S. 156, 91 L. Ed. 162 (1946). Here the sales proceeds *were* sufficient to pay principal and interest. In allowing interest to date of payment (but disallowing interest *on* that interest), again the Supreme Court interprets the meaning of the *Sexton* case, saying, on page 164:

> "Simple interest on secured claims accruing after the petition was filed was denied *unless the security was worth more than the sum of principal and interest due.* Sexton v. Dreyfus (U.S.), supra." (Emphasis ours).

Thus the interpretation of the *Sexton* case as being limited to where sales proceeds are *not* sufficient to pay post-bankruptcy interest is not merely our own. The same Supreme Court on these two later occasions itself so interpreted it.

Numerous Circuit Court cases, notable among them for clear discussion being *Oppenheimer v. Oldham* and *In re Gotham Can Co., supra,* also carefully explain the application of the *Sexton* case.

Oppenheimer v. Oldham, supra, was a first deed of trust case where the security was sold by the bankruptcy court free and clear of liens, and the

proceeds being sufficient to pay interest to date of payment of principal, interest was paid. After referring to the *Vanston* case as authority for *allowing* such interest, the case goes on to state the rule that:

> "It has always been a fundamental principle of the bankruptcy law that the property rights and interests designed as liens and pledges, when valid in bankruptcy, shall not be impaired in the administration of a bankrupt estate."

In re Macomb Trailer Coach, Inc., 200 F. 2d 611 (6th Cir.) *(id., Weeks v. McInnis)*, should be noted at this point in discussing the *Sexton* and *Vanston* cases, not only for its facts and reasons but also because the Supreme Court denied certiorari (345 U.S. 958 (1953)) some two years *after* the *Beecher* case.

A sale was ordered and made free and clear of liens. Sales proceeds *were* sufficient to pay interest to date of payment of principal on the secured claim, which was allowed. In so doing the court stated (p. 613):

> "Appellee relies upon Sexton v. Dreyfus, supra, 219 U.S. 339, 31 S. Ct. 256, 55 L. Ed. 244; and City of New York v. Saper, supra, 336 U.S. 328, 69 S. Ct. 554, 93 L. Ed. 710. In our opinion, these cases * * * did not involve the same question which is presented here. * * * Sexton v. Dreyfus involved a question of marshalling. City of New York v. Saper involved interest on tax claims which are not secured obligations. See In re Gotham Can Co., 2 Cir., 48 F. 2d 540, and In re Worden, D.C. W.D. Ky., 107 F. Supp. 496, where

two of these cases are so distinguished. On the contrary, the rule contended for by appellants was recognized as the correct rule by the Supreme Court in Coder v. Arts, 213 U.S. 223, at page 245, 29 S. Ct. 436, 53 L. Ed. 772. In the opinion in *Vanston Bondholders Protective Committee v. Green,* supra, 329 U.S. 156, at page 164, 67 S. Ct., at page 240, the Court in stating the general rule said—'Simple interest on secured claims accruing after the petition was filed was denied *unless the security was worth more than the sum of principal and interest due.'* (Emphasis added.) Our ruling in favor of the appellants is also in accord with similar rulings in a number of the circuits."

With this background, we now turn to *Beecher v. Leavenworth State Bank,* 192 F. 2d 10 (9th Cir., 1951). Prior to *Beecher,* there was no particular confusion as to just what the rule was in the Ninth Circuit on this question.

United States v. Sampsell, 153 F. 2d 731 (9th Cir., 1946), noted that where the security was worth enough to support a post-bankruptcy interest claim, the rule that interest stops on the date of bankruptcy did not apply. This was in line with all other circuits.

The *Beecher* case, in a footnote appended on page 14 (192 F. 2d 10, at 14), states that *United States v. Sampsell, supra,* was "necessarily overruled" by the Supreme Court in the *Vanston* case. This is an untrue statement. In the *Vanston* case the bankrupt estate was insolvent, but the security itself was sufficient to pay principal plus post-bankruptcy interest.

And, although interest on interest was denied, simple post-bankruptcy interest *was allowed.* (See, also, earlier discussion.) The *Vanston* case, then, not only didn't overrule *United States v. Sampsell,* but applied the identical rule and came up with the identical result as to simple post-bankruptcy interest.

Thus not only is the footnote wrong, but it is unnecessary to the *Beecher* case anyway, as will be seen. We mention it, however, since the order herein appealed from appears primarily to rely on it to deny post-bankruptcy interest, saying (T.R. 55):

> "Both the Referee and this Court are bound by the decision of the Court of Appeals for the Ninth Circuit in Beecher that Vanston overruled U. S. v. Sampsell on the question of whether post-bankruptcy interest should be allowed on a secured claim when the sale proceeds of the security were ample for that purpose."

In *Beecher v. Leavenworth State Bank, supra,* creditors of Beecher held mortgages on his property. In April, 1939 they purchased the property at sheriff's sale after obtaining judgments of foreclosure in a Washington state court. This constituted their "security" when, on February 1, 1940, Beecher filed in bankruptcy. There was no sale of the security in the bankruptcy free and clear of liens, but an order allowing claims pursuant to Section 75 of the Act, which order disallowed interest on the debts after date of filing.

There was no discussion as to whether or not sales proceeds were or were not sufficient, there being no sale. The court moreover noted (p. 14):

"* * * there has been a failure to appraise the redemption value of the farm-debtor property."

Following is the text of the *Beecher* case in support of its decision (p. 14):

"As a general rule, interest stops on both secured and unsecured claims upon the date of filing the petition in bankruptcy. This is a rule of convenience which has developed from a century and a half of English bankruptcy practice. The basis of the rule is to allow orderly administration of the bankrupt's estate; matters must be brought to a halt at the time certain and this date allows the rendition of accounts without doubt as to any future claims for interest. Certain peculiar considerations require the application of the rule to interest on secured claims. Otherwise, *the equity of unsecured creditors is in danger of being wiped out* by interest claims of *secured creditors who have extended credit at high rates during the debtor's transitional period of financial embarrassment prior to bankruptcy.* Further, the period of administration may be lengthy, especially when, as here, there has been a failure to appraise the redemption value of the farm-debtor's property." (Emphasis added).

"A contrary rule for secured claims would also discourage contests by the unsecured creditors of secured claims. They would be forced to abstain so that the administration of the estate could be wound up quickly; and the trustee would have every motive to make quick sales in order to bring administration to a halt shortly.

Two qualifications of the rule that interest on secured claims stops at the date of bankruptcy have been recognized:

> (1) If the estate turns out to be fully solvent, it has been thought more equitable to apply the surplus to creditors' claims for interest rather than returning the money to the debtor.
>
> (2) If securities in the creditors' possession pledged as collateral yield income, this amount has been charged with the secured creditors' claims for interest.
>
> Except as stated above, the only time in which the majority of modern cases have allowed interest after bankruptcy on secured claims is when the courts have discovered equitable reasons for doing so. *Vanston Bondholders Protective Committee v. Green,* 329 U.S. 156, 91 L. Ed. 162; *Pacific States Corp. v. Hall,* 9th Cir., 166 F. 2d 688."

Two things are apparent from the above language: First, a general rule is announced, two exceptions spelled out, and a third exception noted in passing that certain other cases have "equitable reasons" for allowing interest, citing *Vanston* as such a case. Risking repetition, we again point out that in the *Vanston* case there was a specific finding that sales proceeds *were* sufficient to pay post-bankruptcy interest, and such interest was allowed.

In *Pacific States Corp. v. Hall* (166 F. 2d 688 (9th Cir., 1948)) there was *no* specific finding of any sales proceeds being sufficient—the court stating just to the contrary, that (p. 672)

> "from the record before us, *the value of the security* and the relative equities between the secured creditor and the subordinate creditors *cannot be determined*" (emphasis ours)

and *for that reason* denied secured claimant's claim for post-bankruptcy interest. The same point appears in the *Beecher* case. As before seen, there was not only no sale free and clear, but the court specifically found a complete failure to even appraise the redemption value of the security (supra).

The only "equity" then clearly present in the *Vanston* case, and absent in the *Beecher* and *Pacific States* cases, was and is the finding of security value sufficient to pay post-bankruptcy interest.

The second thing apparent from the quoted language is the reason—the policy basis—announced as supporting the *Beecher* rule.

That is, the danger of lessening the unsecured creditor's equity in proceeds over and above all secured claims, discouraging the contesting of secured claims by unsecured creditors because of interest piling up and sapping their equity during litigation, and a resultant motivation of the trustee to make quicker sales.

In the case at bar the record before this Court shows the proceeds are sufficient to pay appellant's interest to date of sale, but are not sufficient to create any equity whatsoever for general unsecured creditors *regardless of whether post-bankruptcy interest is or is not allowed*. The only single result of denying appellant post-bankruptcy interest is to give the second deed of trust holders a bonus they would not otherwise receive if the property were subjected to foreclosure under ordinary California state law proceedings.

To our knowledge, *Wilson v. Dewey,* 133 F. 2d 962 (8th Cir., 1943), is the most recent case in any Circuit Court to handle this precise question. The bankrupt's real property was subject to a first trust deed of $12,-000 at 6 per cent and a second trust deed of $3,000 at 6 per cent. On a sale free and clear, the sales proceeds were sufficient to pay the first encumbrance plus post-bankruptcy interest, but not enough to pay even all the principal of the second deed of trust. As between denying post-bankruptcy interest to the first and applying it towards the second, the Circuit Court held the first encumbrance entitled to principal and all post-bankruptcy interest to date of payment in preference to payment of that interest towards the principal of the second deed of trust.

We hardly believe the quoted reasons for the *Beecher* decision are intended to establish a rule for the Ninth Circuit contrary to all other circuits and to the Supreme Court, for the facts of that case differ notably by their absence. But even if those reasons were sufficiently controlling, their presence in *Beecher* is highlighted by their absence in the present case now on appeal.

It is fundamental under California state law that the lien of a deed of trust, if it so declares, secures the payment of interest until such time as all principal is repaid (*In re Haacke* (D.C. Cal.), 25 Cal. 311), and the express provision in a note that interest accrues and is payable until the principal is paid is to be enforced (*Bell v. San Francisco Savings Union,* 153 Cal. 64, 94 P. 225).

In sales free and clear of liens, most Circuit Court cases allowing post-bankruptcy interest mention that the security by its terms includes the securing of interest until principal is repaid. None of them, though, seems to specifically cite Section 57(h) of the Bankruptcy Act dealing with ordinary bankruptcies. In part, it reads as follows:

> "The value of securities held by secured creditors shall be determined by converting the same into money **according to the terms of the agreement pursuant to which such securities were delivered to such creditors,** * * *" (Emphasis ours).

In the *Beecher* case, the security of the creditor in question was not based on an agreement any longer existing, but was solely the decree of foreclosure granted under Washington state law. Consequently, the above quoted section would not necessarily be applicable at all in the Section 75 proceeding of *Beecher v. Leavenworth State Bank*. On the contrary, in reference to interest on secured claims under a Section 75 proceeding (as was Beecher's), Section 75(K) specifically allows the bankruptcy court almost free hand in dealing with interest on secured claims, stating:

> "* * * but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured."

The distinction between the interest rule on unsecured claims, on secured claims, and on secured claims where the security is sufficient to cover interest, is

ably brought out in Volume XI, No. 3 of *Business Lawyer* (April, 1956), in an article by Milton P. Kuffer (pp. 74, 75):

"The first important principle relates to the collectibility of interest. It is frequently stated that 'in bankruptcy, interest on claims ceases on the date of petition filed'. Properly understood within its limitations, this principle is perfectly valid. The limitation is that it applies only to unsecured claims. It is simple arithmetic that, when interest on all unsecured claims is cut off at the date of bankruptcy, the ultimate distributional result is exactly the same as if interest were accrued upon them to the date of the final liquidation of the estate. And such is the law, even with respect to claims of the sovereign, such as for taxes. Not so, however, with respect to secured claims to the extent to which the value of the security may be sufficient to meet interest and contractual and other legitimate charges. A moment's reflection establishes the distinction. When a lender takes security, at that moment his lien for advances and interest attaches to it, and the supervention of bankruptcy does not—as it cannot—diminish his rights. It therefore follows that, so far as the value of his security may be sufficient for the purpose, he may retain and look to his security for the full payment of the principal of his claim, and interest and contractual and other legitimate charges upon it, right down to the date of payment.

Obviously, this rule does not extend beyond its reason. It does not apply to the extent to which the realization upon the security is insufficient. As to such insufficiency, as just noted, a lender

> is an unsecured creditor and must share with them in the distribution of the general assets * * *"

as well as in the annotation in 27 A.L.R. 2d 586, at 592:

> "Even in the absence of a general surplus in the bankrupt's estate, the question is frequently presented as to whether interest accruing after bankruptcy should be allowed on a secured claim where the property pledged has come into the trustee's hands *and been sold,* realizing more than enough to satisfy the principal of the secured debt. Since (1) ordinarily the security in question has been given to secure the payment of interest as well as principal, (2) by adopting other available procedures for the collection of his claim the creditor could have realized on the security for such interest as well as principal, and (3) Section 67 of the 1898 statute (11 USC Section 107) expressly provided that bona fide liens should not be affected by bankruptcy, it has generally been held that where the sale of the security by the trustee realizes more than enough to satisfy the principal of the secured claim, any surplus should be applied to the satisfaction of after-accruing interest before being turned into the general funds of the estate. *Vanston Bondholders Protective Committee v. Green* (1946), 329 U.S. 156, 91 L. Ed. 162." (To the same effect a great many cases from the Districts Courts and the various Circuit Courts are cited.)

We have not at length discussed cases cited from the other nine circuits which uniformly hold that post-bankruptcy interest *is* allowed under the circum-

stances of this kind, primarily because we do not anticipate any serious contention that they do not so hold. Rather, we have tried to show the Supreme Court's real position to date, and that the *Beecher* case is either a peculiar animal which should be penned up in its own backyard or else, if it is so vicious as to be capable of further unpredictable interpretation, it should then be put quietly to rest.

It has been appellant's contention through the lower courts that the case at bar could as easily be decided by *following* the *Beecher* rule under the third exception entitled generally "equitable reasons" (page 13) for allowing post-bankruptcy interest, those equities being:

(1) Sale free and clear of liens *(Louisville Joint Stock Land Bank v. Radford, supra)*;

(2) Sales proceeds sufficient to cover post-bankruptcy interest *(Vanston v. Bondholders Protective League, supra)*;

(3) Agreement providing that security covers interest to date of payment of principal (Bankruptcy Act, Section 57(h));

(4) Proceeds of loan for which security given goes directly to improvement of the security, increasing its value proportionally;

(5) Disallowed post-bankruptcy interest not creating any funds or equity for general creditors, but only granting a bonus to junior secured claimant otherwise not available under state law foreclosure;

(6) Status of junior secured claimants, on notice at time of loan (from recordation) that interest to date of payment of principal will be paid first encumbrances prior to any payment on junior security;

(7) Status of secured claimant as savings and loan association, promoting federal policy of ease in home building (e.g., FHA and VA insured loans);

(8) Status of secured loan, as one for construction of home.

None of these equities appear definitely to have existed in *Beecher v. Leavenworth State Bank* after a careful review of the facts.

We still feel this is so. However, at this time we are now before a court which is not at all "bound" by the *Beecher* case, and need not follow it.

If *Beecher* is to be interpreted as disallowing post-bankruptcy interest even where the security covering interest is sold free and clear and the sales proceeds are sufficient to pay it, unless even *more* "equitable reasons" exist, then it allows the taking away of a valuable property right which none of the other circuits of these United States countenances, such taking being allowed under a very vague formula. "Equitable reasons" may mean one thing to one referee, another to another, and conceivably, in times when more bankruptcies are expected to be filed this fiscal year than even at the height of the depression

in 1932,[1] reviews could begin to clutter up the federal courts in this circuit with examinations of each particular case.

Our Constitution requires the enactment of uniform laws in the field of bankruptcy. There is no less reason for uniformity in judicial decisions. If *Beecher v. Leavenworth State Bank* is consistent with allowing post-bankruptcy interest to date of sale of the security free and clear of liens when the security itself provides that it secures such interest and proceeds are sufficient (whether we call this the "equitable reason" or not being unimportant), then it is not in conflict with the law as presently prevailing in all other circuits and was merely misinterpreted in the instant case by the District Court.

But if the *Beecher* case is not consistent with the above rule, then for all the reasons hereinabove set forth it should be disapproved, overruled, or both.

Wherefore, appellant Palo Alto Mutual Savings and Loan Association prays for an order reversing that certain order of February 13, 1956, of Honorable Oliver J. Carter, United States District Court, which order affirmed and approved that certain order of Bernard J. Abrott of May 18, 1955, sustaining the trustee's objections to appellant's proofs of secured claims insofar as said proofs claimed interest at 5½ per cent per annum on principal unpaid from July 14, 1954, to and including March 18, 1955, and order

[1]House Appropriations Committee Report, April 13, 1955; 70,049 bankruptcies filed in 1932, 75,000 expected for 1956.

that said trustee's objections be overruled and that trustee pay to appellant interest from July 14, 1954 to March 18, 1955, together with all costs of appeal incurred herein, and for such other and further relief as the Court deems just.

Dated, San Jose, California,
September 1, 1956.

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